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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1972

No._____

KATHLEEN CARTER, ET AL, *Petitioners*

v.

CITY OF FORT WORTH, ET AL, *Respondents*

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

Petitioners pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, entered in this proceeding on March 3, 1972.[1]

CITATION TO OPINIONS BELOW

The Order of the three-judge district court remanding the cause to the single district judge is printed in Appendix 1 hereto, *infra*, p. 18. The Order of Dismissal and Memorandum on Motions to Dismiss of the single district judge is unreported and is printed in Appendix 1 hereto, *infra*, p. 19. The opinion of the Court

[1]An exhaustive list of all petitioners is as follows: Kathleen Carter, Rita Parrish, Cecilia Stephens, Charles Ellis Dreyfus, Theresa Ludvigson, and George Armstrong. An exhaustive list of all respondents is as follows: City of Fort Worth, Roy A. Bateman, City Secretary, R. M. Stovall, Mayor, and Crawford Martin, Attorney General of Texas.

of Appeals for the Fifth Circuit, printed in Appendix 1 hereto, *infra*, p. 20, is reported in 456 F.2d 572.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on April 3, 1972. (Appendix 1, *infra.*) A timely petition for rehearing en banc was denied on April 20, 1972, and this petition for certiorari was filed within 90 days of that date. (Appendix 1, *infra.*) The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

QUESTIONS PRESENTED

1

Whether an order of a three-judge court dissolving itself for lack of jurisdiction and an order of dismissal by a single district judge for lack of jurisdiction is a procedurally appropriate disposition of a case otherwise required to be heard by a statutory three-judge court under 28 U.S.C. Section 2281 where such lack of jurisdiction is predicated solely upon a determination that a prior state court case is res judicata of the plaintiffs' claims.

2

Whether a prior state trial court judgment is res judicata of a similar cause of action in federal court brought by the same plaintiffs where the state court held that it had no subject matter jurisdiction of the plaintiffs' claim under the applicable state law.

3

Whether Article 6, Sections 3 and 3a of the Texas Constitution and statutory provisions based thereon, which limit the franchise in bond elections to persons who own taxable property, some of which property has been rendered for taxation, is consistent with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

STATUTORY PROVISIONS INVOLVED

The statutory and constitutional provisions involved are as follows:

> Art. 6, Section 3, TEX. CONST. (1955); Art. 6, Section 3a, TEX. CONST. (1955); Art. 5.03, TEXAS ELECTION CODE ANN. (Supp. 1972); Art. 5.04, TEXAS ELECTION CODE ANN. (Supp. 1972); Art. 5.07, TEXAS ELECTION CODE ANN. (1967); Art. 9.01, 9.03-9.05, 9.07, 9.30, 9.31, TEXAS ELECTION CODE ANN. (1967); 28 U.S.C. Section 2281.

They are set forth in full in Appendix 2, *infra*, p. 36.

STATEMENT OF THE CASE

Texas election laws limit the right to vote in bond elections to persons who own property which has been rendered for taxation.[2] Petitioners brought the instant case in federal district court to have those laws declared unconstitutional and to enjoin their enforcement on the ground that those laws are in irreconcilable

[2]See Appendix 2 hereto, *infra*, p. 36, for a text of the statutes and constitutional provisions.

conflict with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (R. App. p. 1).[3]

On June 25, 1969, petitioner Kathleen Carter brought a suit, Cause Number 57283-C, in the District Court of Tarrant County, Texas, against the Fort Worth Independent School District, challenging her exclusion from voting in a school bond election held on May 10, 1969. (R. App. p. 250).

On April 20, 1970, petitioners added additional parties, and made the suit a class action. The City of Fort Worth was joined as a party defendant. Petitioners sought a declaratory judgment that the Texas voting laws challenged in the instant suit were unconstitutional, and advanced, as a ground for declaratory relief, that the City of Fort Worth was about to hold a city bond election. (R. App. p. 37).

On June 12, 1970, a hearing was held in that case on Motions for Summary Judgment filed by all parties, and the case was at that time finally submitted to the state court for a decision. (R. App. p. 250).

On July 10, 1970, the office of the Attorney General announced with respect to Texas bond elections that "the policy of this office will be to comply with the laws and Constitution of this state until such time as the *federal judiciary* shall see fit to clearly dispose of them." (Emphasis added). (R. App. p. 134).

---

[3]The certified record in this court has not yet been printed in Appendix form. All references to "R. App., p. ...." are to be printed bound Appendix as it appeared in the Court of Appeals which is contained in the certified record. All other portions of the certified record are identified by the title of the document contained in the certified record.

On August 10, 1970, respondent City of Fort Worth adopted an ordinance calling for a bond election on September 8, 1970, and directing that the election be held as a dual election (R. App. p. 114). The votes of persons whose property had been rendered for taxation were to vote in a separate booth or polling box from the persons who had no property rendered for taxation. Dual balloting had not theretofore been employed by the City of Fort Worth nor had non-property owners previously been permitted to cast a ballot. (R. App. p. 106).

On August 25, 1970, Judge James Wright of the 141st Judicial District Court of Tarrant County, Texas, announced his decision in the state court suit by means of a letter to all parties, which letter read in part: "Under the circumstances, the Court has no justiciable controversy before it and is precluded from rendering an advisory opinion." (Trial Brief; City of Fort Worth, p. 15, and R. App. p. 251).[4]

On August 31, 1970, petitioners, who were the same parties as the plaintiffs in the state court suit, filed this class action in the Federal District Court for the Northern District of Texas, CA-4-1541, seeking an

[4]The text of the letter appears only in the Defendant's City of Fort Worth Trial Brief, which has been made a part of the certified record in this Court. The text of the letter was asserted as a fact by the Defendant City of Fort Worth in that brief and is acknowledged as a true copy of the letter by petitioners. It is thus a part of the evidence in this case. The letter appears on pages 15 and 16 of that brief.

Since that trial brief was certified as a part of the record in this case for the sole purpose of including that letter in the record, a full text of the letter is set forth in Appendix 3, *infra*, p. 46, hereto, for the Court's convenience.

All future references to that portion of the record will be in the form "Trial Brief: City of Fort Worth, p. ___".

injunction to prevent the City of Fort Worth from holding the September 8, 1970 bond election under their announced dual balloting procedure. The respondents in this suit are the City of Fort Worth and the officials thereof, and the Attorney General of Texas who was not a party to the state court suit. (R. App. p. 1).

On September 2, 1970, the 141st Judicial District Court formally entered and signed an order granting Defendants' Motion for Summary Judgment, and denying Plaintiffs' Motion for Summary Judgment in the state court suit. (R. App. p. 88). The plaintiffs gave notice of appeal, but did not perfect that appeal.

On September 8, 1970, the City of Fort Worth held a bond election in which the following propositions were submitted to the electorate:

I	Street Improvements	$ 23,100,000.
II	Fire Protection	750,000.
III	Park and Recreation Improvements	3,450,000.
IV	Aviation Improvements at Municipal Airport	2,000,000.
V	Sanitary, Sewer System and Sewage Disposal	9,500,000.

Items numbered one, two and five passed in the aggregate and passed in each tabulation. The other two items both failed in the aggregate while passing in the non-property owner tabulation. Therefore, the non-property owners who voted did not as a class affect the outcome of the election.

A dual system of balloting was used in which persons who signed affidavits stating they were property owners who had rendered property for taxation voted in one tabulation, while those who did not voted in another. (R. App. pp. 195-200).

All of petitioners except Theresa Ludvigson voted in the September 8, 1970 bond election. (R. App. p. 202).

All of the petitioners were qualified to vote in elections of the City of Fort Worth except that they are unwilling to accept rendition of property of any type for taxation as a condition to the right to vote, or have their vote counted in non-federal elections, or to sign any type of affidavit stating that they are property owners, or that they have rendered property for taxation as a condition to the right to vote, or have their vote counted, in non-federal elections. (R. App. p. 181).

It has been the policy of the Attorney General of Texas since December 19, 1969, to refuse to approve issuance and sale of bonds unless a majority of all persons has voted for the proposition. However, the Attorney General refuses to approve the issuance of bonds if a majority of persons whose property has been rendered for taxation vote against a proposition, even though the same proposition received a majority of the votes cast by the aggregate. (R. App. p. 204).

Thus property owners are in effect given a veto power over the majority in the event the majority of all voters pass a proposition.

Thereafter, on September 14, 1970, the petitioners

(2) THE DECISION BELOW DECIDED A QUESTION OF TEXAS STATE LAW IN DIRECT CONFLICT WITH THE APPLICABLE TEXAS STATUTORY AND CASE LAW GOVERNING THE SUBJECT MATTER JURISDICTION OF TEXAS TRIAL COURTS WITH RESPECT TO ELECTION CONTESTS.

A. *The State Court Had No Jurisdiction Because the State Case Was Not An Election Contest Under Texas State Statutory Law.*

Articles 9.01 through 9.38 of the Texas Election Code provide the "final and exclusive" method of contesting elections in the State of Texas.[5] *Carter v. Tomlinson*, 149 Tex. 7, 227 SW2d 795 at 797 (1950); *Slater v. Ellis County Levee Improvement District No. 9*, 120 Tex. 272, 36 SW2d 1014 (1931). It is undisputed on this record that the petitioners never filed an election contest with respect to the City of Fort Worth election to be held on September 8, 1970.

Garza v. Dare, 475 SW2d 340 (Tex.Civ.App.—Corpus Christi 1971, no writ history) held that Article 9.03 of the Texas Election Code requires 30 day notice of an election contest in writing, including the intention to contest, and the grounds relied upon to sustain the contest, was a mandatory notice. The Court further held that taxpayers were not entitled to contest a revenue bond election where neither the notice of intention to contest the election nor notice of the grounds relied upon to sustain the contest, had been given. It is undisputed on this record that the

[5]See Appendix 2, *infra* p. 42, for a full text of the relevant statutes.

petitioners in this case never gave any type of notice of intention to contest the City of Fort Worth bond election to be held on September 8, 1970, nor any notice of the grounds relied upon to sustain such a contest, had one been filed.

It should also be carefully noted that in Texas no election contest can be filed until after the election is held. Art. 9.01 TEX. ELECTION CODE ANN. (1967).

B. *The State Case Law Holds That No Election Contest Can Be Filed In Advance of An Election.*

Petitioners' only challenge in state court to the September 8, 1970 bond election of the City of Fort Worth was by means of a prayer for declaratory relief in advance of the election and in advance of the ordinance calling the election.

However, the courts of Texas have without exception held that the declaratory judgment device is not available as a method of contesting an election. *Kelsey v. Corbett*, 396 SW2d 440 (Tex. Civ. App. — El Paso 1965, ref. n.r.e.), *appeal dismissed*, 385 U.S. 35; *Lasater v. Middleton*, 390 SW2d 8 (Tex. Civ. App. — El Paso 1965, ref. n.r.e.); *Lund v. Alanis*, 381 SW2d 955 (Tex. Civ. App.—San Antonio 1964, err. dism'd); *Killam v. Webb County*, 270 SW2d 628 (Tex. Civ. App. — San Antonio 1954, ref. n.r.e.).

> Plaintiffs' original petition for 'declaratory judgment and injunctive relief' was addressed to the district court under its general powers, legal and equitable, under which the courts do *not* have jurisdiction of an election contest. *Moore v. Edna Hospital District*, 449 SW2d 508 at 522 (Tex.

> Civ. App.—Corpus Christi 1969, ref. n.r.e) (Emphasis added)

A diligent search had been made by counsel for petitioners for any case in the State of Texas holding that an election contest may be entertained by a Texas trial court before the election is held through use of the declaratory judgment device. Not one such case has been located.

It is respectfully submitted that there is no authority in the law of the State of Texas holding that state district courts acquire subject matter jurisdiction of an election contest filed through the declaratory judgment device *prior* to the holding of the election.[6]

C. *The State Judge Held His Court Lacked Jurisdiction of Petitioners' Claims.*

The August 25, 1970 letter of the state judge setting forth his reasons for granting Respondents' Motion for Summary Judgment in part provided:[7]

> * * * further, there is no showing that a contest was timely filed with regard to such election.
>
> Under the circumstances, the Court has no justiciable controversy before it and is precluded from rendering an advisory opinion. It must be and is presumed that the Fort Worth Independent School District and the City of Fort Worth will

[6]There is one statutory exception to the rule that an election cannot be contested by means of declaratory judgment: Art. 717m TEX. REV. CIV. STAT. ANN. (1964), allowing political subdivisions to seek declaratory relief. This statutory exception confers no rights on private citizens to bring such actions.

[7]The formal judgment, appearing at R. App. pp. 87, 88, states no underlying reasons for the court's decision.

> conduct future elections in full compliance with the Constitution and Laws of the United States and the State of Texas.[8]

This letter leaves no doubt that Judge James Wright of the 141st Judicial District Court thought his court had no jurisdiction of the Appellants' declaratory judgment cause of action with respect to the city bond election of September 8, 1970.

After the discovery by petitioners that the state court had no jurisdiction of the cause of action as to the City of Fort Worth bond election to be held on September 8, 1970, the petitioners were surely free to abandon that cause of action and bring a proper election contest in either state or federal court.

(3) THE DECISION BELOW CONFLICTS WITH PRIOR DECISIONS OF THE UNITED STATES SUPREME COURT ON THE RES JUDICATA EFFECT OF PRIOR JUDGMENTS.

A judgment denying relief for lack of jurisdiction does not preclude a subsequent suit in a court of competent jurisdiction on the merits of the cause of action which was originally involved. *Smith v. McNeal*, 109 U.S. 426 (1882); *Etten v. Lovell Manufacturing Co.*, 225 F.2d 844 (3rd Cir. . . . 1955), *cert. den.* 350 U.S. 966 (1956); *United States v. Costello*, 171 F.Supp. 10 (S.D.N.Y. . . . 1959), *aff'd* 275 F.2d 335 (2nd Cir. . . . 1960), *aff'd* 365 U.S. 265 (1961).

"Merits" means "the real or substantial grounds of action or defense as distinguished from matters of

[8]See Appendix 3 *infra*, p. 46, for a full text of the letter.

practice, procedure, jurisdiction or form". *Clegg v. United States*, 112 F.2d 886 at 887 (10th Cir. . . . 1940). The clearly stated ground for the sustaining by the state court of Defendants' Motion for Summary Judgment was that the court had no justiciable controversy before it and was precluded from rendering an advisory opinion. The state court further clearly stated that no proper election contest had been filed. (Trial Brief: City of Fort Worth, p. 15). Therefore, this was not a decision on the merits of the controversy.

However, if there be any doubt created by the state judge's reference to the meritorious issues in that letter, that doubt must be resolved in favor of a judgment *not* on the merits, unless the contrary can be shown. *Hartmann v. Time, Inc.*, 166 F.2d 127 (3rd Cir. . . . 1948), *cert. den.* 334 U.S. 838 (1948).

If, as the Court of Appeals stated in its opinion, the petitioners' prayer for injunctive relief from "any other election", the injury from which is "purely speculative at this time and it was purely speculative at the time the federal suit was filed", is insufficient to state a cause of action different from the one in state court, then *a fortiori*, the state court petition as finally amended was insufficient to state a cause of action as to any election to be held by the City of Fort Worth in September of 1970. The state court case was unconditionally submitted for judgment on June 12, 1970, some 59 days prior to the adoption of the ordinance calling the election by the City of Fort Worth. On June 11, 1970, a prayer for relief from such an election would, in the words of the Court of Appeals, have

been asking for relief from harm that was "purely speculative" at that point in time. *Moses Lake Homes v. Grant County*, 365 U.S. 744 (1961).

If the state court suit stated no cause of action as to the September 8, 1970 bond election, *then no judgment in that case could possibly be res judicata as to a subsequent suit in federal court as to the September 8, 1970 bond election. St. John v. Wisconsin Employment Relations Board*, 340 U.S. 411 (1951).

If it is assumed for the sake of argument that the state court had such jurisdiction, a judgment in that case could not possibly have afforded the plaintiffs in that case any meaningful relief from the manner in which the September 8, 1970 bond election was in fact held. *After* the state court case was submitted to the state judge for a decision, a completely new and theretofore unannounced policy of employing dual balloting in the holding of bond elections was adopted: *all* otherwise qualified voters were permitted to vote, without respect to property ownership, but their votes were given a different weight from those of property owners.

(4) THE ULTIMATE CONSTITUTIONAL ISSUE PRESENTED BY THIS CASE IS OF GREAT SIGNIFICANCE IN THE ADMINISTRATION OF ELECTON LAWS IN EVERY POLITICAL SUBDIVISION OF THE STATE OF TEXAS WHICH HAS OR WILL SEEK FINANCING THROUGH ISSUANCE OF GENERAL OBLIGATION BONDS.

It is probable that all general obligation bonds voted in Texas since June 23, 1970 are void. On that date, this Court announced its decision in *Phoenix v. Kolodjiewski*, 399 U.S. 204 (1970). This Court there held that a 1969 bond election in which the franchise was reserved to property owners was void. Issuance of those bonds was enjoined.

In that opinion, this Court stated:

> * * * Nor have we been shown that the fourteen states now restricting the franchise have unique problems that make it necessary to limit the vote to property owners. *Phoenix v. Kolodjiewski*, 399 U.S. 212-213 (1970).

Texas is one of those fourteen states.

In the face of the *Phoenix* decision, the Texas Supreme Court has squarely held that the Texas voting scheme challenged in this suit is not violative of the Equal Protection Clause of the Fourteenth Amendment. *Montgomery Independent School District v. Martin*, 404 SW2d 638 (Tex. Sup. 1971).

Since the record in this case is complete and all evidentiary matters have been determined, this Court

has the power to decide this case on the merits of the ultimate constitutional issue presented.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Fifth Circuit.

Respectfully submitted,

DON GLADDEN
702 Burk Burnett Building
Fort Worth, Texas
Counsel for Petitioners

July 13, 1972

APPENDIX 1: OPINIONS BELOW

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CA 4-1541

KATHLEEN CARTER, ET AL
VS.
THE CITY OF FORT WORTH, ET AL

ORDER

Upon consideration of the papers and briefs filed in this case and after oral argument by counsel on the question of jurisdiction of this Court, the Court is of the opinion that it is without jurisdiction.

Therefore, the cause of action is remanded to the Honorable Leo Brewster, the District Judge to whom application for relief in this cause was made, for appropriate action. The three-judge Court is dissolved.

/s/ HOMER THORNBERRY
U. S. CIRCUIT JUDGE
/s/ LEO BREWSTER
U. S. DISTRICT JUDGE
/s/ R. HILL
U. S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CA 4-1541

KATHLEEN CARTER, ET AL
VS.
CITY OF FORT WORTH, ET AL

ORDER OF DISMISSAL

The respective motions for dismissal filed by the defendants herein have been presented in a hearing held after due notice, with the attorneys for each of the parties present and participating. After hearing oral arguments and considering the briefs filed by the parties, the Court is of the opinion that this case should be dismissed for lack of jurisdiction for the reasons given in the memorandum opinion filed simultaneously herewith.

It is therefore ordered that this case be hereby dismissed for lack of jurisdiction and that the costs be taxed against the plaintiffs, jointly and severally.

Signed, June 30, 1971.

/s/ LEO BREWSTER
JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CA 4-1514

KATHLEEN CARTER, ET AL
VS.
CITY OF FORT WORTH, ET AL

MEMORANDUM ON MOTIONS TO DISMISS

The plaintiffs, Kathleen Catrer, Rita Parrish, Cecilia Stephens, Charles Ellis Dreyfus, Theresa Ludvigson and George Armstrong, brought this action against the City of Fort Worth, its City Secretary (R. A. Bateman) and its Mayor (R. M. Stovall), and the Attorney General of the State of Texas (Crawford Martin) seeking to enjoin a city bond election and the certification of any bonds voted therein. The plaintiffs based their suit upon the claim that the provisions of the Texas Constitution (Art. 6, Secs. 3 and 3(A)) and of the Texas Statutes (Arts. 5.03, 5.04 and 5.07 of the Texas Election Code) under which such election was to be held violated the Equal Protection Clause of the Federal Constitution. The effect of those provisions was to limit the vote in elections on tax-supported[1] bond issues to quailified electors owning property rendered for taxation in the political subdivision proposing the bond issue.

[1]As opposed to revenue bonds to be paid out of income from the project constructed or improved by money derived from the sale of such bonds.

The plaintiffs claim that the Court has jurisdiction under 28 U.S.C.A. 1343(3) and 42 U.S.C.A. 1983.

The bond election in question was a purely local one held for the purpose of determining whether or not the Fort Worth City Council should be authorized to issue the following five types of general obligation tax-supported bonds in the future: Street Improvement, Fire Protection, Park and Recreation, Airport, and Sewage Disposal Plant.

This suit was filed at about 5:00 P.M. on August 31, 1970, and the bond election had theretofore been set by the City Council for September 8, 1970. At a conference held on September 3, 1970, between the author of this memorandum and respective counsel for each of the parties, it was recognized by all present that it was "impossible to assemble a three-judge court and hold a meaningful hearing before the present bond election scheduled on September 8, 1970, as the Attorney General was entitled to five days notice and he has not yet made his appearance herein." See Memorandum Order of September 3, 1970. As shown by that order, the plaintiffs stated that they did not insist on their request for temporary injunction to stop the election itself, as they felt that their claims would not become moot by reason of the election. Their contentions could be pursued under their request that the certification of the bonds be enjoined. With consent of all parties, the order directed that the bond election proceed as scheduled on September 8, 1970. Thereafter, a three-judge court was constituted, and it met in Fort Worth for the purpose of holding a trial of this case. At such hearing, after considering the briefs

and oral arguments, that court held that it had no jurisdiction and remanded the case to the resident judge for appropriate action on the defendants' motions to dismiss.

The basis for the action of the three-judge court was that these plaintiffs had litigated this same issue in Cause No. 57283-C, Kathleen Carter, et al v. Fort Worth Independent School District and the City of Fort Worth, in the District Court of Tarrant County, Texas, 141st Judicial District, Brown v. Chastain, 5 Cir., 416 F. 2d 1012 (1969); Paul v. Dade County, Florida, 5 Cir., 419 F 2d 10 (1969). The defendants' motion to dismiss now before the resident judge for action is predicated upon the same ground.

The plaintiffs in the state court action are the same as the plaintiffs in the case now before this Court. The defendants in the state court suit were the City of Fort Worth and the Fort Worth Independent School District, whereas the City of Fort Worth, two of its officers, and the Attorney General of Texas[2] are defendants in the case here. The reason for the two political subdivision defendants in the state court was that the plaintiffs were challenging an election on a school bond issue as well as one on city bonds. However, the city bond election there involved was the same as the one here. The grounds for attacking the validity of each of the bond elections were the same as those urged in the present case.

On June 12, 1970, the state court held a hearing on

[2]There is no state statute requiring the Attorney General to be made a party to a case of this kind.

the respective motions for summary judgment filed by the plaintiffs, the Fort Worth Independent School District and the City of Fort Worth. At the conclusion of the hearing, the matter was taken under advisement. On August 25, 1970, the state court judge sent the attorneys[3] in that case a letter saying in part:

> "After careful consideration and study, the Court is of the opinion that the Plaintiffs' Motion for Summary Judgment should be, and is hereby overruled, and that the Defendants' Motion for Summary Judgment should be and they are hereby sustained."

Judgment was entered on September 2, 1970, in accordance with such pronouncement. The plaintiffs gave notice of appeal, but later abandoned their appeal after filing the present case in the federal court on August 31, 1970.

The following language from Judge Dyer's opinion in Brown v. Chastain, supra, at p. 1013, is pertinent here:

> "It is obvious from the complaint and the requested relief that the appellants are here attempting to relitigate their federal constitutional claims by obtaining a form of direct federal district court review of the state decisions . . ."
>
> ". . . If the [state court] decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellant proceeding . . ."
>
> ". . . [F]ederal courts most assuredly do not

[3]The respective attorneys for the plaintiffs and the City of Fort Worth in the state court case were the same as the ones for those litigants in the present case.

> provide a forum in which disgruntled parties can re-litigate federal claims which have been presented to and decided by state courts."

The plaintiffs here chose the state court as the forum to litigate the very issue they are now presenting to this Court. After having had their day in court, they want to re-litigate their case here.

Both Brown v. Chastain and Paul v. Dade County, supra, held that, under circumstances similar to those in this suit, the appropriate action was to dismiss the cases for lack of jurisdiction.

An order will be entered dismissing this case for lack of jurisdiction, with the costs taxed against the plaintiffs.

Signed, June 30, 1971,

/s/ LEO BREWSTER
JUDGE

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 71-2496

KATHLEEN CARTER, ET AL.,
Plaintiffs-Appellants,
versus
CITY OF FORT WORTH, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Texas

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(March 3, 1972)

Before WISDOM, COLEMAN and SIMPSON, Circuit Judges.

COLEMAN, Circuit Judge: Article 6, Section 3, of the Texas Constitution provides that:

> "In all elections to determine expenditure of money or assumption of debt, only those shall be qualified to vote who pay taxes on property in said city or incorporated town; provided, that no poll tax for the payment of debts thus incurred, shall be levied upon the persons debarred from voting in relation thereto."

This State constitutional provision has been implemented by Articles 5.03, 5.04, and 5.07 of the Texas Election Code, providing that only quailified electors

who have duly rendered their property for taxation shall be qualified to vote in such elections and only if the individual offering to vote shall sign and swear to an affidavit that he owns property, describing one item thereof, and that he has duly rendered it for taxation. A false affidavit in this regard is a felony, punishable as such.

In a Texas State Court the plaintiffs brought a class action charging that officials of the City of Fort Worth had announced that a bond issue election would be held during 1970 and that their right to vote as non-property owners in such an election was in imminent dangero f denial because of the foregoing provisions of the Texas Constitution and the Texas Election Code. They asked the state court to declare these constitutional and statutory provisions null and void as in conflict with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Later, a supplemental petition particularly singled out Article 5.04 of the Election Code. Still later, another supplemental petition was filed in the state court by which it was alleged that the City of Fort Worth had officially admitted that the constitutional and statutory provisions would be enforced in any future bond issue election.

On June 20, 1970, the case was submitted to the state court on motions for summary judgment filed by parties on both sides.

On August 25, 1970, the state court addressed a letter to all parties, announcing that the plaintiffs' motion for summary judgment "should be and is here-

by overruled" and that the defendants' motions for summary judgment "should be and they are hereby sustained". Eight days later, September 2, 1970, the state court order was formally entered. No appeal was prosecuted to any Texas appellate court.

On August 10, 1970, the City Council of Fort Worth called a special bond issue election for September 8, 1970, for the purpose of submitting the issuance of general obligation bonds for certain permanent city improvements. The election was held as called, that is, on September 8, 1970. The resident qualified electors who had owned and duly rendered taxable property voted separately from the other resident qualified electors who owned no property. The returns were counted separately and in the aggregate with the result that the bond issue proposals which passed had been approved by both property owners and non-property owners. Propositions which failed had been approved by a majority of the non-property owners but also failed upon a tabulation of the votes of all those voting, including those who owned and did not own property. In other words, the votes cast separately by the non-property owners had no effect on the outcome of the election or the approval or disapproval of any proposed bond issue.

After the state court had announced its decision rejecting plaintiffs' claims, but before the formal order was entered, the plaintiffs in the state court suit repaired to the United States District Court (August 31, 1970) where they filed a class action against the City of Fort Worth, certain of its officials, and the Attorney General of Texas, seeking to have declared un-

constitutional the very same provisions of the Texas Constitution and the Texas Election Code which they had unsuccessfully attacked in the state court suit. They also sought to enjoin the holding of the proposed election on September 8, 1970, or "any other election" [without describing the nature of such elections] in a manner which would suggest that ownership and rendition of property for taxation was a prerequisite to the right to vote or to have one's vote counted, receiving the votes of non-property owners separately, or requiring the affidavits prescribed by statute. Because the provisions herein referred to apply only to bond issue elections and a bond issue election was the subject of the challenge, the language "any other election" has no significance unless it could be said that plaintiffs intended to refer to some unannounced election which might be held at some indefinite time in the future.

The only relief sought in the federal court which had not been sought in the state court that the Attorney General of Texas be directed to certify bond issues on the basis of all votes cast in an election without reference to ownership of property or the execution of affidavits of ownership. It was likewise asked that the Attorney General be enjoined from refusing to certify bond issues on the ground that votes had been cast by non-property owning qualified electors. This would, of course, have been an unavoidable consequence of the holding sought and lost in the state court.

The parties asked for a Three Judge Court but since time limitations made it impossible to convene such a

Court between the date of the petition (August 31) and the date of the election (September 8) an *agreed* order was entered by the initiating Judge allowing the election to proceed as scheduled. Plaintiffs stated that in their opinion holding the election would not moot the case as they could concentrate on the prayer for relief against the Attorney General, enjoining the issurance of the bonds if any were approved. It apparently never occurred to them that the vote of the non-property owners might make no difference in the outcome of the election, as turned out to be the case.

On September 14, 1970, the plaintiffs-appellants filed a supplemental complaint asking that the Attorney General of Texas be temporarily, and upon final hearing, permanently enjoined from certifying the issuance of bonds which were voted in the election of September 8, 1970, or in any other election held by a political subdivision of the State of Texas in which the requirements set forth by the aforementioned provisions of the Texas Constitution and Texas Election Code are observed. This complaint also asked that the City of Fort Worth, its Mayor and City Secretary, be temporarily and upon final hearing permanently enjoined from selling bonds voted in the election of September 8.

This amended complaint overlooked the fact that the votes of the non-property owners had been in favor of the bond issues which were approved by the voters as a whole.

A Three Judge Court was assembled for the purpose of hearing the case on June 4, 1971. That Court, however, was of the opinion that it was without juris-

diction, dissolved itself, and ordered the case remanded to the District Judge before whom the complaint was originally filed. On June 30 the District Judge entered an order again dismissing the case for lack of jurisdiction.

We quote the following from the memorandum opinion of the District Judge:

> "The basis for the action of the three-judge court was that these plaintiffs had litigated the same issue in Cause No. 57283-C, Kathleen Carter, et al v. Fort Worth Independent School District and the City of Fort Worth, in the District Court of Tarrant County, Texas, 141st Judicial District, Brown v. Chastain, 5 Cir., 416 F.2d 1012 (1969); Paul v. Dade County, Florida, 5 Cir., 419 F.2d 10 (1969). The defendants' motion to dismiss now before the resident judge for action is predicated upon the same ground.
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> "The plaintiffs in the state court action are the same as the plaintiffs in the case now before this Court. The defendants in the state court suit were the City of Fort Worth and the Fort Worth Independent School District, whereas the City of Fort Worth, two of its officers, and the Attorney General of Texas are defendants in the case here. The reason for the two political subdivision defendants in the state court was that the plaintiffs were challenging an election on a school bond issue as well as one on city bonds. However, the city bond election there involved was the same as the one here. The grounds for attacking the validity of each of the bond elections were the same as those urged in the present case.
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> "On June 12, 1970, the state court held a hearing on the respective motions for summary judgment filed by the plaintiffs, the Fort Worth Independent School District and the City of Fort

Worth. At the conclusion of the hearing, the matter was taken under advisement. On August 25, 1970, the state court judge sent the attorneys in that case a letter saying in part:

> 'After careful consideration and study, the Court is of the opinion that the Plaintiffs' Motion for Summary Judgment should be, and is hereby overruled, and that the Defendants' Motions for Summary Judgment should be and they are hereby sustained.'

"Judgment was entered on September 2, 1970, in accordance with such pronouncement. The plaintiffs gave notice of appeal, but later abandoned their appeal after filing the present case in the federal court on August 31, 1970.

"The following language from Judge Dyer's opinion in Brown v. Chastain, supra, at p. 1013, is pertinent here:

> 'It is obvious from the complaint and the requested relief that the appellants are here attempting to relitigate their federal constitutional claims by obtaining a form of direct federal district court review of the state decisions . . . .
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> '. . . . If the [state court] decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding . . . .
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> '. . . . [F]ederal courts most assuredly do not provide a forum in which disgruntled parties can re-litigate federal claims which have been presented to and decided by state courts.'

"The plaintiffs here chose the state court as the

forum to litigate the very issue they are now presenting to this Court. After having had their day in court, they want to relitigate their case here.

"Both Brown v. Chastain and Paul v. Dade County, supra, held that under circumstances similar to those in this suit, the appropriate action was to dismiss the cases for lack of jurisdiction."

This Court is, of course, well aware of the decision of the Supreme Court of Texas in Montgomery Independent School District v. Martin, 1971, 464 S.W. 2d 638, in which that Court upheld the constitutional and statutory provisions limiting voting rights in school bond issue elections to electors who are property owners and who have rendered their property for taxes. Specifically, the Supreme Court of Texas held that these requirements do not deny equal protection of the law. We are unable to locate any citation which would indicate a petition for certiorari to the Supreme Court of the United States. Of course, these were different litigants, but the present parties plaintiff took no appeal from the decision of the Texas trial court.

We are likewise aware of the decision of the Supreme Court of the United States in *Kramer v. Union Free School District*, 1969, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed. 2d 583, and *Cipriano v. City of Houma*, 1969, 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647. In this connection, see, also, *Stewart v. Parish School Board of the Parish of St. Charles*, 3-Judge Court, (E.D., La., 1970), 310 F.Supp. 1172, affirmed 400 U. S. 844, 91 S.Ct. 136, 27 L.Ed.2d 129.

The sole issue presently before us is: Whether the

Three Judge Court or the District Court sitting as a single judge had jurisdiction of the case. We do not consider the merits.

Our prior decisions in *Brown v. Chastain, supra,* and *Paul v. Dade County, supra,* are plainly controlling here, as decided by the courts below. The parties were the same, the issues were the same. The plaintiffs lost what they allowed to become a final judgment in the state court and started over again in the federal courts. That is the point to be emphasized here. The present parties are through. That does not foreclose the right of others to file an appropriate action in the federal system if the occasion should arise.

Finally, we must deal with the plaintiffs' contention that their federal action sought injunctive relief from "any other election" to be held under the Texas Constitution and Election Code as written. The plaintiffs say that this aspect of their complaint differentiates it from the complaint filed in Texas state court, and thus that the additional relief requested removes the federal suit from the scope of *Brown v. Chastain* and *Paul v. Dade County, supra.* But the plaintiffs have not alleged that any particular election is now pending or will be pending at any time in the near future. Irreparable injury, an indispensable ingredient of injunctive relief, is purely speculative at this time and it was purely speculative at the time the federal suit was filed, at least as to unspecified future elections. We therefore hold that the portion of the plaintiffs' complaint which looked to "any other election" failed to state a request for injunctive relief that was ripe for constitutional decision, and that the district court

had no jurisdiction to grant relief on that portion of the complaint. For it has long been true that "federal judicial power is to be exercised to strike down legislation, whether state or federal, only at the instance of one who is himself immediately harmed, or immediately threatened with harm, by the challenged action". *Poe v. Ullman*, 1961, 367 U.S. 497, 504, 6 L.Ed.2d 989, 996, 81 S.Ct. 1752.

The judgments dismissing the complaint are

AFFIRMED.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 71-2496

KATHLEEN CARTER, ET AL.,
Plaintiffs-Appellants,
versus
CITY OF FORT WORTH, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Texas

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ON PETITION FOR REHEARING AND
PETITION FOR REHEARING EN BANC
(Opinion Mar. 3, 1972, 5 Cir., 1972, ___ F. 2d ___).

(April 20, 1972)

Befor WISDOM, COLEMAN and SIMPSON,
Circuit Judges.

PER CURIAM: The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED.

APPENDIX 2: TEXAS STATUTES AND CONSTITUTIONAL PROVISIONS

1. Article 6, section 3, TEX. CONST.

Municipal elections; qualifications of voters. All qualified voters of the State, as herein described, who shall have resided for six months immediately preceding an election, within the limits of any city or corporate town, shall have the right to vote for Mayor and all other elective officers; but in all elections to determine expenditure of money or assumption of debt, only those shall be qualified to vote who pay taxes on property in said city or incorporated town; provided, that no poll tax for the payment of debts thus incurred, shall be levied upon the persons debarred from voting in relation thereto.

2. Article 6, section 3(a), TEX. CONST.

Bond issues; loans of credit; expenditures; assumption of debts; qualifications of voters. When an election is held by any county, or any number of counties, or any political subdivision of the State, or any political sub-division of a county, or any defined district now or hereafter to be described and defined within the State and which may or may not include towns, villages or municipal corporations, or any city, town, or village, for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, only qualified electors who own taxable property in the State, county, political sub-division, district, city, town or village where such election is held, and who have duly rendered the same for taxa-

tion, shall be qualified to vote and all electors shall vote in the election precinct of their residence.

3. Article 5.03, TEXAS ELECTION CODE (Supp. 1969).[1]

Qualifications for voting for bond issues, lending credit, expending money, or assuming debt. When an election is held by any county, or any number of counties, or any political subdivision of the state, or any political subdivision of a county or any defined district now or hereafter to be described and defined within the state, and which may or may not include towns, villages, or municipal corporations, or any city, town, or village, for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, only qualified electors who own taxable property in the state, county, political subdivision, district, city, town, or village where such election is held, and who have duly rendered the same for taxation, shall be qualified to vote and all electors shall vote in the election precinct of their residence. Property shall be deemed to have been duly rendered for taxation, for the pupose of determining eligibility to vote in an election as provided in this code and in Article VI, section 3a, of the Texas Constitution, only if the property was rendered to the county, city, district, or other political subdivision holding the elec-

[1]Until September 1, 1969, the following sentence was the final sentence of Article 5.03, TEXAS ELECTION CODE (1967):

"In making up the certified list of owners of taxable property to be used at an election, the tax collector shall include thereon only the names of persons owning taxable property which has been duly rendered for taxation, as herein defined." Effective September 1, 1969, it was dropped from the statute.

tion within the period of time fixed by law for such rendition, or was placed on the tax rolls by the tax assessor prior to the date on which the election was ordered, if the regular rendition period expired before that date.

4. Article 5.04, TEXAS ELECTION CODE (Supp. 1969).[2]

Affidavit of voter in bond election, etc. (a) Before any person is allowed to vote in an election for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, he shall sign and swear to an affidavit to the effect that he owns property, giving a description of one item, which has been duly rendered for taxation to the political subdivision holding the election at a time and in a manner which entitles him to vote in the election, as provided in Section 35 (Article 5.03) of this code. The voter's registration certificate number shall be shown on the affidavit, and it shall contain a statement that the affiant understands that the giving of false information in the affidavit is a felony punishable by

[2]Until September 1, 1969, the text of Article 5.04 TEXAS ELECTION CODE (1967) read as follows:

"*Certified list of taxpayers.* Whenever an election is called in the State of Texas or any political subdivision thereof or in any defined district for the purpose of authorizing the issuance of bonds which place a lien upon real estate, it shall be the duty of the tax collector of the county or political subdivision or defined district to furnish to the election judges a certified list of the owners of taxable property in said county or political subdivision of the State in which said election is to be held who have rendered the same for taxes as shown on the tax rolls; said list of property owners shall determine the qualification of the electors to participate in said election."

On September 1, 1969, the text in the body of the Appendix became effective.

a fine not to exceed $5,000 or by imprisonment in the penitentiary not to exceed five years, or by both such fine and imprisonment.

(b) The secretary of state shall prescribe the form of the affidavit, and may prescribe instructions to accompany the affidavit. A form for multiple signatures of voters may be used for voting at regular polling places and for absentee voting by personal appearance where the absentee ballots are cast on a voting machine or are counted by a special canvassing board.

Each person voting an absentee ballot by mail or voting by personal appearance in elections where the ballots are to be sent to regular polling places for counting shall be furnished an individual affidavit form, which shall be signed and sworn to at the time the voter marks his ballot. After the voter seals the ballot envelope, he shall place the affidavit into the carrier envelope along with the ballot envelope and the ballot stub. The election officers shall ascertain that the affidavit is properly executed before opening the ballot envelope, and if it is not properly executed, the ballot shall be rejected.

Voters voting at regular polling places or voting absentee by personal appearance shall swear to the affidavit before an officer of the election, and all clerks and deputy clerks for absentee voting and all election judges and clerks at regular polling places shall have authority to administer the oath required of the voter.

(c) The description of a specific item of property

which is required on the affidavit shall be sufficient as to personal property if it identifies the property by a general statement of its nature, as, for example, household furniture, automobile, livestock, jewelry, stock of merchandise, corporate securities, etc. For real property, a description of the property by abstract, survey, patent, subdivision, block, lot, or other legal description shall not be necessary. If the real property is located in an unincorporated town or village, it shall be sufficient to identify the property by general description as so located, as, for example, "house and lot in the town of ....." It shall be sufficient to describe a farm, ranch, or other rural property by a statement of its location with reference to a town, community, or other well-known landmark, as, for example, "farm near ....." Upon request of the voter, the election officer attending him shall inform him as to what will be sufficient description on the affidavit for the specific item of property which he wishes to list.

(d) The ballot of a voter who has been accepted by the election officer as eligible to vote at the election shall never be declared void for any defect or insufficiency in the affidavit or for any misstatement as to property ascerted to have been rendered, if the voter in fact is the owner of any property which has been duly rendered for taxation to the subdivision holding the election.

(e) After voting is concluded, an officer of the election shall place all the affidavits in an envelope or other container which shall be securely fastened and

marked as to identify its contents, and the presiding judge shall deliver the affidavits to the officer having custody of the ballots voted at the election at the same time that he delivers the returns, and the affidavits shall be preserved by such officer under the same regulations applicable to preservation of ballots. The affidavits shall be open to public inspection, but the inspection must be in the presence of the custodial officer or a duly authorized deputy.

(f) A person who knowingly gives false information or makes any false statement in the affidavit required by this section is guilty of a felony punishable by a fine not to exceed five thousand dollars or by imprisonment in the penitentiary not to exceed five years, or by both such fine and imprisonment.

5. Article 5.07, TEXAS ELECTION CODE (1967).

To vote in city elections. All qualified electors of this State, as described in the two preceding Sections (Arts. 5.05, 5.06) who shall have resided for six (6) months immediately preceding an election within the limits of any city or incorporated town shall have a right to vote for mayor and all other elective officers; but in all elections to determine the expenditure of money or assumption of debt, or issuance of bonds, only those shall be qualified to vote who own taxable property in the city or town where such election is held and who have duly rendered the same for taxation; and all electors shall vote in the election precinct of their residence.

TEXAS ELECTION CODE STATUTES:

Art. 9.01

The district court shall have original and exclusive jurisdiction of all contests of elections, general or special, for all school, municipal, precinct, county, district, state offices, or federal offices, except elections for the offices of Governor, Lieutenant Governor, Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office, Attorney General, and Members of the Legislature.

The venue of suits or contests between candidates for any office to be filled by the choice of voters of the entire state shall be in Travis County. The venue of suits or contests between candidates for any justice of any Court of Civil Appeals shall be in the county where said Court of Civil appeals has its sittings.

The venue in all other election contests between candidates shall be in the county where the candidate receiving the certificate of election resides. If there is but one district court in the county in which venue is placed by this law and the judge of said court is disqualified to hear any contest, said judge shall be replaced for purposes of said contest in the manner provided by law for civil suits.

Nothing herein shall be construed to prohibit the district court in the county where any such contest may be filed from changing the venue to some adjacent county, upon showing of adequate cause. Acts 1951, 52nd Leg., p. 1097, ch 492, art. 129.

Art. 9.03

Any person intending to contest the election of any one holding a certificate of election for any office mentioned in this law, shall, within thirty (30) days after the return day of election, give him a notice thereof in writing and deliver to him, his agent or attorney, a written statement of the ground on which such contestant relies to sustain such contest. By the "return day" is meant the day on which the votes cast in said election are counted and the official result thereof declared. Acts 1951, 52nd Leg., p. 1097 ch. 492, art. 131.

Art. 9.04

The person holding such certificate shall, within ten (10) days after receiving such notice and statement, deliver, or cause to be delivered, to said contestant, his agent or attorney, a reply thereto in writing. Acts 1951 52nd Leg., p. 1097, ch. 492, art. 132.

Art. 9.05

The notice statement and reply required by the two preceding articles may and shall be served by any person compentent to testify, and shall be served by delivering the same to the party for whom they are intended in person, if he can be found in the county, if not found, then upon the agent or attorney of such person, or by leaving the same with some person over the age of sixteen (16) years at the usual place of abode or business of such person. Acts 1951, 52nd Leg., p. 1097 ch. 492, art. 133.

Art. 9.07

When the notice, statement and reply have been

filed with the clerk of the court, he shall docket the same as in other causes, and the said contest shall have precedence over all other causes. If the office contested for be that of district clerk, then a clerk pro tem shall be appointed as is provided by law in suits where the clerk is a party to the suit. Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 135.

Art. 9.30

If the contest be for the validity of an election held for any other purpose than the election of an officer or officers in any county or part of a county or precinct of a county, or in any incorporated city, town, or village, any resident of such county, precinct, city, town, or village, or any number of such residents, may contest such election in the district court of such county in the same manner and under the same rules, as far as applicable, as are prescribed in this chapter (art. 9.01-9.38) for contesting the validity of an election for a county office. Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 158.

Art. 9.31

In any case provided for in the preceding Section (art. 9.30), the county attorney of the county, or if there is no county attorney, the district attorney of the district, or the mayor of the city, town or village, or the officer who declared the official result of said election, or one of them, as the case may be, shall be made the contestee, and shall be served with notice and statement, and shall file his reply thereto as in the case of a contest for office; but in no case shall the

costs of such contest be adjudged against such contestee, or against the county, city, town, or village which they may represent, nor shall such contestee be required to give bond upon an appeal. Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 159.

APPENDIX 3: LETTER OF STATE COURT JUDGE

On August 25, 1970, Judge James E. Wright of the 141st Judicial District Court of Texas informed counsel in the State Court case that he would sustain the motion for summary judgment of defendant, City of Fort Worth. The letter stated:

"Gentlemen:

After careful consideration and study, the Court is of the opinion that Plaintiffs' Motion for Summary Judgment should be, and is hereby overruled, and that the Defendants' Motions for Summary Judgment should be and they are hereby sustained.

The Court's decision is based, inter alia, on the following considerations: Except for Plaintiff Carter, no party has been denied the right to vote in an election held by the Fort Worth Independent School District or the City of Fort Worth. The denial of Plaintiff Carter's vote in the school district election of May 10, 1969 was due to her own misinterpretation of the law; further, there is no showing that a contest was timely filed with regard to such election.

Under the circumstances, the Court has no justiciable controversy before it and is precluded from rendering an advisory opinion. It must be and is presumed that the Fort Worth Independent School District and the City of Fort Worth will conduct future elections in full compliance with the Constitution and Laws of the United States and the State of Texas.

The Phoenix case relied upon by the capable at-

torney for Plaintiffs is not, by its own limiting terms, controlling here. There the Court said '. . . the question now presented for decision: Does the Federal Constitution permit a state to restrict to *real property taxpayers* the vote in elections to approve the issuance of general obligation bonds?' (emphasis ours) The Constitution and Laws of the State of Texas impose no such restriction." Pages 15 and 16 TRIAL BRIEF: CITY OF FORT WORTH.